

AMENDED IN SENATE JULY 13, 2011

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN ASSEMBLY JUNE 1, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1027

Introduced by Assembly Member Buchanan

February 18, 2011

An act to add the heading of Part 1 (commencing with Section 9500) to, and to add Part 2 (commencing with Section 9510) to, Division 4.8 of the Public Utilities Code, relating to local publicly owned electric utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1027, as amended, Buchanan. Local publicly owned electric utilities: utility poles and support structures.

(1) Existing law provides for the creation of local publicly owned electric utilities, which include municipal corporations, municipal utility districts, public utility districts, and irrigation districts, that furnish electric services.

This bill would require a local publicly owned electric utility to make appropriate space and capacity on and in their utility poles and support structures available for use by cable television corporations, video service providers, and telephone corporations. The bill would require

fees adopted to cover the costs to provide this use, and terms and conditions of access, to meet specified requirements, and would specify the manner in which these fees and terms and conditions of access could be challenged. By imposing new duties on local utilities, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Part 1 (commencing with Section
2 9500) is added to Division 4.8 of the Public Utilities Code, to read:

3
4 PART 1. LOW-INCOME WEATHERIZATION PROGRAMS

5
6 SEC. 2. Part 2 (commencing with Section 9510) is added to
7 Division 4.8 of the Public Utilities Code, to read:

8
9 PART 2. UTILITY POLES AND SUPPORT STRUCTURES

10
11 9510. (a) The Legislature finds and declares that in order to
12 promote wireline and wireless broadband access and adoption, it
13 is in the interest of the state to ensure that local publicly owned
14 electric utilities, including irrigation districts, that own or control
15 utility poles and support structures, including ducts and conduits,
16 make available appropriate space and capacity on and in those
17 structures to cable television corporations, video service providers,
18 and telephone corporations under reasonable rates, terms, and
19 conditions.

20 (b) The Legislature further finds and declares that the oversight
21 of fees and other requirements imposed by local publicly owned
22 electric utilities as a condition of providing the space or capacity
23 described in subdivision (a) is a matter of statewide interest and
24 concern. Therefore, it is the intent of the Legislature that this part

1 supersedes all conflicting local laws and this part shall apply in
2 charter cities.

3 (c) The Legislature further finds and declares that local publicly
4 owned electric utilities should provide access to utility poles and
5 support structures with a recovery of actual costs without
6 subsidizing for-profit cable television corporations, video service
7 providers, and telephone corporations.

8 ~~(d) Nothing in this part alters the ability of a local publicly~~
9 ~~owned electric utility to determine who performs work for the~~
10 ~~local publicly owned electric utility on its facilities.~~

11 9510.5. As used in this part, “utility the following terms have
12 the following meanings:

13 (a) “Communications service provider” means a cable television
14 corporation, video service provider, or telephone corporation.

15 (b) “Governing body” means the governing body of a local
16 publicly owned electric utility, including, where applicable, a
17 board appointed by a city council.

18 (c) “Street light pole” means a pole, arm, or fixture used
19 primarily for street, pedestrian, or security lighting.

20 (d) “Utility pole” means an electricity or telephone pole, but
21 does not include a street light pole or an electricity pole used solely
22 for the transmission of electricity at 50 kilovolts or higher and not
23 intended for distribution of communications signals or electricity
24 at lower voltages. ~~“Street light pole” means a pole, arm, or fixture~~
25 ~~used primarily for street, pedestrian, or security lighting.~~

26 9511. (a) ~~(1)~~ A local publicly owned electric utility shall make
27 appropriate space and capacity on and in a utility pole and support
28 structure owned or controlled by the local publicly owned electric
29 utility available for use by ~~a cable television corporation, video~~
30 ~~service provider, or telephone corporation~~ *communications service*
31 *provider* pursuant to reasonable terms and conditions. Rates, terms,
32 and conditions that are specified in a contract executed before
33 January 1, 2012, shall remain valid until the contract, rate, term,
34 or condition expires or is terminated according to its terms by one
35 of the parties. If an annual fee is included in a contract executed
36 before January 1, 2012, but the amount of the fee is left
37 unspecified, the requirements of Section 9512 apply.

38 ~~(2)~~

39 (b) (1) A local publicly owned electric utility shall respond to
40 a request for use by ~~a cable television corporation, video service~~

1 ~~provider, or telephone corporation~~ *communications service*
2 *provider* of a utility pole or support structure owned or controlled
3 by the local publicly owned electric utility within 45 days of the
4 date of receipt of the request, or 60 days if the request is to attach
5 to over 300 poles. If the request is denied, the local publicly owned
6 electric utility shall provide in the response the reason for the denial
7 and the remedy to gain access to the utility pole or support
8 structure. If a request to attach is accepted, the local publicly owned
9 electric utility, within 14 days after acceptance of the request, shall
10 provide a cost estimate, based on actual cost, for any necessary
11 make-ready work required to accommodate the attachment. The
12 requesting party shall accept or reject the make-ready cost estimate
13 within 14 days. Within 60 days of acceptance of the cost estimate,
14 the local publicly owned electric utility shall notify any existing
15 third-party attachers that make-ready work for a new attacher needs
16 to be performed. The requesting party shall have the responsibility
17 to coordinate with third-party existing attachers for make-ready
18 work to be completed. All parties shall complete all make-ready
19 work within 60 days of the notice, or within 105 days in the case
20 of a request to attach to over 300 poles. The local publicly owned
21 electric utility may complete make-ready work without the consent
22 of the existing attachers, if the existing attachers fail to move their
23 attachments by the end of the make-ready timeline requirements
24 specified in this paragraph.

25 (3)

26 (2) The timelines described in paragraph (2) (1) may be extended
27 under special circumstances upon agreement of the local publicly
28 owned electric utility and the ~~cable television corporation, video~~
29 ~~service provider, or telephone corporation~~ *communications service*
30 *provider*.

31 (4)

32 (c) A local publicly owned electric utility may deny an
33 application for use of a utility pole or support structure because of
34 insufficient capacity or safety, reliability, or engineering concerns.
35 In denying an application, a local publicly owned electric utility
36 may also take into account the manner in which a request from a
37 ~~cable television corporation, video service provider, or telephone~~
38 ~~corporation~~ *communications service provider* under this part could
39 impact an approved project for future use by the local publicly

1 owned electric utility of its utility poles or support structures for
2 delivery of its core utility service.

3 *(d) This part does not limit the authority of a local publicly*
4 *owned electric utility to ensure compliance with all applicable*
5 *provisions of law in determining whether to approve or disapprove*
6 *use of a utility pole or support structure.*

7 ~~(b)–~~

8 9511.5. (a) If a local publicly owned electric utility has the
9 authority pursuant to other law to impose a fee to provide the use
10 described in ~~this section~~ *Section 9511*, that fee shall be adopted
11 and levied consistent with the requirements of this part.

12 ~~(e)~~

13 (b) The governing body of the local publicly owned electric
14 utility shall determine the fee pursuant to Section 9512.

15 ~~(d) (1) A local publicly owned electric utility may require an~~
16 ~~additional one-time charge equal to three years of the annual fee~~
17 ~~described in Section 9512, for attachments reasonably shown to~~
18 ~~have been made without authorization that are discovered on or~~
19 ~~after January 1, 2012.~~

20 ~~(2) A local publicly owned electric utility may remove an~~
21 ~~attachment made without authorization, if all of the following~~
22 ~~conditions are met:~~

23 ~~(A) The owner of the attachment fails to pay the charge~~
24 ~~described in paragraph (1), if that charge is applicable.~~

25 ~~(B) The owner of the attachment does not seek approval to~~
26 ~~attach pursuant to this part within a reasonable period of time.~~

27 ~~(C) The owner of the attachment does not contest that the~~
28 ~~attachment was made without authorization.~~

29 ~~(3) An attachment of a service drop wire is not made without~~
30 ~~authorization for the purposes of this subdivision, if the owner of~~
31 ~~the attachment seeks approval to attach pursuant to this part within~~
32 ~~45 days of the attachment.~~

33 ~~(e) This part does not grant additional authority to a local~~
34 ~~publicly owned electric utility to impose a fee that is not otherwise~~
35 ~~authorized by law. Nothing in this part shall be construed to~~
36 ~~prohibit a local publicly owned electric utility from requiring a~~
37 ~~one-time fee to process a request for attachment, if the one-time~~
38 ~~fee does not exceed the actual cost of processing the request.~~

39 ~~(f) In the event that it becomes necessary for the local publicly~~
40 ~~owned electric utility to use space or capacity on or in a support~~

1 ~~structure occupied by the cable television corporation, video service~~
2 ~~provider, or telephone corporation's equipment, the cable television~~
3 ~~corporation, video service provider, or telephone corporation shall~~
4 ~~either pay all costs for rearrangements necessary to maintain the~~
5 ~~pole attachment or remove its equipment at its own expense.~~

6 *(c) This part does not grant additional authority to a local*
7 *publicly owned electric utility to impose a fee that is not otherwise*
8 *authorized by law.*

9 9512. (a) (1) An annual fee charged by a local publicly owned
10 electric utility for the use of a utility pole by a ~~cable television~~
11 ~~corporation, video service provider, or telephone corporation~~
12 *communications service provider* shall not exceed an amount
13 determined by multiplying the percentage of the total usable space
14 that would be occupied by the attachment by the annual costs of
15 ownership of the pole and its supporting anchor. As used in this
16 paragraph and paragraph (2), "usable space" means the space above
17 the minimum grade level that can be used for the attachment of
18 wires, cables, and associated equipment. It shall be presumed,
19 subject to factual rebuttal, that a single attachment occupies one
20 foot of usable space and that an average utility pole contains 13.5
21 feet of usable space.

22 (2) An annual fee charged by a local publicly owned electric
23 utility for use of a support structure by a ~~cable television~~
24 ~~corporation, video service provider, or telephone corporation~~
25 *communications service provider* shall not exceed the local publicly
26 owned electric utility's annual costs of ownership of the percentage
27 of the volume of the capacity of the structure rendered unusable
28 by the equipment of the ~~cable television corporation, video service~~
29 ~~provider, or telephone corporation.~~ *communications service*
30 *provider.*

31 (3) As used in this subdivision, the "annual costs of ownership"
32 is the sum of the annual capital costs and annual operation costs
33 of the pole or support structure, which shall be the average costs
34 of all similar utility poles or structures owned or controlled by the
35 local publicly owned electric utility. The basis for the computation
36 of annual capital costs shall be historical capital costs less
37 depreciation. The accounting upon which the historical capital
38 costs are determined shall include a credit for all reimbursed capital
39 costs. Depreciation shall be based upon the average service life of
40 the utility pole or support structure. "Annual cost of ownership"

1 does not include costs for any property not necessary for use by
2 ~~the cable television corporation, video service provider, or~~
3 ~~telephone corporation~~ *communications service provider*.

4 (b) A local publicly owned electric utility shall not levy a fee
5 that exceeds the estimated amount required to provide use of the
6 utility pole or support structure for which the annual recurring fee
7 is levied. If the fee creates revenues in excess of actual costs, those
8 revenues shall be used to reduce the fee.

9 ~~(c) If the cable television corporation, video service provider,~~
10 ~~or telephone corporation requests a rearrangement of the utility~~
11 ~~pole or support structure, and the local publicly owned electric~~
12 ~~utility has the authority to levy fees as described in Section 9511,~~
13 ~~the local publicly owned electric utility may charge a one-time~~
14 ~~reimbursement fee for the actual costs incurred for the~~
15 ~~rearrangement.~~

16 ~~(d)~~
17 (c) A jointly owned pole, ~~including the cost of the pole on the~~
18 ~~books of the local publicly owned electric utility,~~ is not included
19 within the requirements of this ~~part~~ *section*, if a joint owner other
20 than the local publicly owned electric utility has ~~the sole control~~
21 ~~of control of access to the space that would be used by the cable~~
22 ~~television corporation, video service provider, or telephone~~
23 ~~corporation~~ *communications service provider*.

24 9513. (a) A local publicly owned electric utility may require
25 an additional one-time charge equal to three years of the annual
26 fee described in Section 9512, for attachments reasonably shown
27 to have been made without authorization that are discovered on
28 or after January 1, 2012.

29 (b) A local publicly owned electric utility may remove an
30 attachment made without authorization, if all of the following
31 conditions are met:

32 (1) The owner of the attachment fails to pay the charge
33 described in subdivision (a), if that charge is applicable.

34 (2) The owner of the attachment does not seek approval to attach
35 pursuant to this part within a reasonable period of time.

36 (3) The owner of the attachment does not contest that the
37 attachment was made without authorization.

38 (c) An attachment of a service drop wire is not made without
39 authorization for the purposes of this section, if the owner of the

1 *attachment seeks approval to attach pursuant to this part within*
2 *45 days of the attachment.*

3 *9514. Nothing in this part shall be construed to prohibit a local*
4 *publicly owned electric utility from requiring a one-time fee to*
5 *process a request for attachment, if the one-time fee does not*
6 *exceed the actual cost of processing the request.*

7 *9515. (a) In the event that it becomes necessary for the local*
8 *publicly owned electric utility to use space or capacity on or in a*
9 *support structure occupied by the communications service*
10 *provider's equipment, the communications service provider shall*
11 *either pay all costs for rearrangements necessary to maintain the*
12 *pole attachment or remove its equipment at its own expense.*

13 *(b) If the communications service provider requests a*
14 *rearrangement of the utility pole or support structure, and the*
15 *local publicly owned electric utility has the authority to levy fees*
16 *as described in Section 9511.5, the local publicly owned electric*
17 *utility may charge a one-time reimbursement fee for the actual*
18 *costs incurred for the rearrangement.*

19 ~~*9513.*~~

20 *9516. (a) (1) Before adopting, or increasing, a fee described*
21 ~~*in Section 9512 this part,*~~ *or adopting or changing the terms and*
22 *conditions of access subject to this part, the local publicly owned*
23 *electric utility shall hold at least one open and public meeting as*
24 *part of a regularly scheduled meeting, at which time oral or written*
25 *presentations relating to the fee or term or condition of access may*
26 *be made.*

27 *(2) At least 14 days before the meeting described in paragraph*
28 *(1), the local publicly owned electric utility shall mail notice of*
29 *the time and place of the meeting, including a general explanation*
30 *of the matter to be considered, and a statement that the data*
31 *required by paragraph (3) is available, to a person or entity who*
32 *files a written request with the local publicly owned electric utility*
33 *for mailed notice of the meeting.*

34 *(3) At least 10 days before the meeting described in paragraph*
35 *(1), the local publicly owned electric utility shall make available*
36 *to the public data indicating the cost, or estimated cost, to make*
37 *utility poles and support structures available for use by a cable*
38 ~~*television corporation, video service provider, or telephone*~~
39 ~~*corporation*~~ *communications service provider, if adopting or*
40 *increasing a fee, and shall make available data and rationale for*

1 adopting or changing the terms and conditions of access, if
2 adopting or changing the terms and conditions of access.

3 (b) (1) An action by a local publicly owned electric utility to
4 adopt, or increase, a fee described in ~~Section 9512~~ *this part*, or
5 adopt or change the terms and conditions of access subject to this
6 part, shall be taken solely by an ordinance or resolution adopted,
7 or by a contract approved, by the ~~legislative governing~~ body of
8 the local publicly owned electric utility. The ~~legislative governing~~
9 body of the local publicly owned electric utility shall not delegate
10 the authority to adopt or increase the fee or term or condition of
11 access to another entity or ~~board~~. The ~~legislative board or an~~
12 ~~official or employee of the board~~. *This subdivision does not restrict*
13 *a city council's existing authority over a governing body appointed*
14 *by the city council*. The governing body of the local publicly owned
15 electric utility shall ensure that the customers of the local publicly
16 owned electric utility and the customers of the ~~cable television~~
17 ~~corporation, video service provider, or telephone corporation~~
18 *communications service provider* are not subsidized by the rates,
19 terms, and conditions proposed for access pursuant to this part.

20 (2) The ~~legislative governing~~ body of the local publicly owned
21 electric utility shall approve the ordinance or resolution or contract
22 to adopt or increase the fee, or adopt or change the terms and
23 conditions of access subject to this part, at a subsequent open and
24 public meeting as part of a regularly scheduled meeting, no earlier
25 than 30 days after the initial public meeting described in
26 subdivision (a).

27 (3) An action adopting a fee or increasing a fee, or adopting or
28 changing the terms and conditions of access subject to this part,
29 pursuant to this section shall be effective no sooner than 60 days
30 following the final action on the adoption of the fee or fee increase
31 or adoption or change in the terms and conditions of access.

32 (c) This section does not apply to a contract extension agreed
33 to by all of the parties to the contract, if the terms, conditions, or
34 rates described in the contract are not changed.

35 ~~9514.~~

36 ~~9517.~~ (a) Any person or entity may protest the adoption or
37 imposition of, or increase of, a fee described in ~~Section 9512~~ *this*
38 *part*, or adoption or change in the terms and conditions of access
39 subject to this part, by serving written notice to the governing body
40 of the local publicly owned electric utility within 30 days of the

1 action taken. The written notice shall contain a statement informing
2 the governing body of the factual elements of the dispute and the
3 legal theory forming the basis for the protest.

4 (b) The filing of protest pursuant to subdivision (a) shall not be
5 a basis for the local publicly owned electric utility to withhold
6 approval of the use of a utility pole or support structure.

7 ~~9515.~~

8 ~~9518.~~ (a) A judicial action or proceeding to attack, review, set
9 aside, void, or annul an ordinance, resolution, motion, or contract
10 adopting, or increasing, a fee described in ~~Section 9512~~ *this part*,
11 or adopting or changing the terms and conditions of access subject
12 to this part, or an automatic adjustment that results in an increase
13 in the amount of a fee described in ~~Section 9512~~ *this part*, shall
14 be commenced within 120 days of the effective date of the
15 ordinance, resolution, motion, contract, or automatic adjustment.

16 (b) An action by a local publicly owned electric utility or
17 interested person shall be brought pursuant to Chapter 9
18 (commencing with Section 860) of Title 10 of Part 2 of the Code
19 of Civil Procedure.

20 (c) A person or entity shall not initiate an action or proceeding
21 pursuant to subdivision (a) unless both of the following
22 requirements are met:

23 (1) The fee or requirement will be directly imposed on the
24 person or entity as a condition for the use of a utility pole or support
25 structure, or the entity is a trade association that represents that
26 person or entity.

27 (2) At least 30 days before initiating the action or proceeding,
28 the person or entity, or trade association representing that person
29 or entity, requests the local publicly owned electric utility to
30 provide a copy of documents that purport to establish that the fee
31 does not exceed the amount reasonably necessary to cover the cost
32 of the use of the utility pole or support structure, consistent with
33 ~~Section 9512~~ *this part*, or that the term and conditions of access
34 or change to the terms and conditions of access are reasonable.
35 The local publicly owned electric utility may charge a fee for the
36 direct costs of copying the documents requested pursuant to this
37 paragraph.

38 (d) An action to enforce this part shall be brought in a court of
39 competent jurisdiction.

1 ~~9516.~~

2 9519. (a) A person or entity, or trade association representing
3 that person or entity, may request an audit in order to determine
4 whether a fee described in ~~Section 9512 this part~~ exceeds the
5 amount reasonably necessary to cover the costs to the utility of
6 the use of a utility pole or support structure, consistent with ~~Section~~
7 ~~9512 this part~~. A person or entity making that request shall retain
8 an independent auditor to conduct an audit to determine whether
9 the fee is reasonable, unless an audit has been performed for the
10 same fee within the previous 12 months. The individual or entity
11 requesting the audit shall pay for the direct costs associated with
12 an audit made pursuant to this subdivision.

13 (b) A person or entity, or trade association representing a person
14 or entity, shall not request an audit unless the fee is directly
15 imposed on the person or entity, or on a member of the trade
16 association, as a condition for the use of the utility pole or support
17 structure.

18 (c) To the extent that the audit determines that the amount of
19 the fee does not meet the requirements of this part, the local
20 publicly owned electric utility shall adjust the fee accordingly.

21 ~~9517. (a) This part does not limit the authority of a local~~
22 ~~publicly owned electric utility to ensure compliance with all~~
23 ~~applicable provisions of law in determining whether to approve~~
24 ~~or disapprove use of a utility pole or support structure.~~

25 9520. (a) *Nothing in this part alters the ability of a local*
26 *publicly owned electric utility to determine who performs work*
27 *for the local publicly owned electric utility on its facilities.*

28 (b) The use of a utility pole or support structure by a ~~cable~~
29 ~~television corporation, video service provider, or telephone~~
30 ~~corporation~~ *communications service provider* shall comply with
31 Public Utilities Commission General Orders 95 and 128 and all
32 other applicable provisions of law.

33 SEC. 3. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 a local agency or school district has the authority to levy service
36 charges, fees, or assessments sufficient to pay for the program or
37 level of service mandated by this act, within the meaning of Section
38 17556 of the Government Code.

O